IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1605 of 1983

with

FIRST APPEAL No 1634 of 1983

to

FIRST APPEAL No 1636 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL FIRE AND GENERAL INSURANCE CO.LTD.

Versus

VISHNUPRASAD C SONI

Appearance:

1. First Appeal No. 1605 of 1983

MR ASPI KAPADIA for MR SB VAKIL for Petitioner No. 1

MR KIRIT I PATEL for Respondents No. 1-2

MR SN SHELAT for Respondent No. 3

NOTICE SERVED for Respondents No. 4-5

2. First Appeal No. 1634 of 1983 to 1636 of 1983

MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 10/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. All these appeals are disposed of by this common order as the same are arising out of the common judgment and award dated 20.1.1983 passed by the learned Motor Accident Claims Tribunal (Main), Banaskantha, District Palanpur, whereby the learned Tribunal decided Motor Accident Claim Petitions No.79 and 90 of 1981.

#. First Appeal No.1605/93 has been filed by the appellant-The Oriental Fire & General Insurance Company Limited only against the award passed by the learned Tribunal in Motor Accident Claims Petition No.90/81 whereby the original claimant No.1-Vishnuprasad Chandulal Soni was ordered to recover Rs.90,000/= with proportionate costs of the application and interest @6% p.a. from the date of application till the date of realisation from the original opponent Nos. 1, 2, 3 and 4 and the liability of the opponent Nos.1 and 2 i.e. State Road Transport Corporation and its driver Rajput Nathuji was fixed at 40% and the liability of opponent Nos.3 and 4 i.e. Gulzarkhan, driver of auto-rickshaw and appellant insurance company was fixed at 60%.

#. The First Appeal No.1634/83 is filed by the appellant-Gujarat State Road Transport Corporation against the award passed by the learned Tribunal in MACP No.90/81. First Appeal No.1635/83 was filed against the judgment and award passed by the learned Tribunal in MACP No.88/81 whereby the respondent-Claimant Smt.Manjulaben Bhailalbhai Soni was awarded only Rs.6,800/= with proportionate costs of the application and interest @6% p.a. and the claimant No.2 was paid Rs.1,200/=.

#. The First Appeal No.1636/83 is filed by the appellant-Gujarat State Road Transport Corporation against the impugned judgment and award passed by learned Tribunal in MACP No.79/91 whereby the respondent-claimant

was awarded Rs.11,700/= with proportionate costs of the application and interest @6% p.a. from the date of the application till the date of realization.

#. The First Appeal Nos.1635 and 1636 of 1983 are straightway required to be dismissed because petty amount is involved in these matters. However, common question involved in all these appeals, therefore, we are required to decide two other first appeals i.e. First Appeal No.1634/93 filed by the appellant-Corporation against the award passed in MACP No.90/81 and First Appeal No.1605/83 filed by the appellant insurance company in the claim petition.

#. Learned counsel Shri Hardik Raval for the appellant-Corporation in First Appeal No.1634 to 1636 of 1983 initially tried to challenge the quantum part of the learned Tribunal whereby the learned Tribunal awarded Rs.90,000/= in MACP No.90/83 but having regard to the evidence led by the parties in the case and the reasons assigned by the learned Tribunal for awarding the amount he was not in a position to assail the quantum part. However, he vehemently tried to submit that the learned Tribunal was wrong in attributing 60% negligence to auto-rickshaw driver. He submitted that in the instant case 40% negligence could not have been attributed to the driver of the State Transport bus because from the finding recorded by the Tribunal itself it is clear that by and large auto-rickshaw driver was solely responsible for the accident.

#. From the evidence and the judgment of the learned Tribunal it is clear that the accident took place when S.T. bus came out all of a sudden from the side road on the main highway and when it was entering the highway at that point of time the auto-rickshaw collided with it and thereby the accident took place. From the scene of offence, it is clear that the highway between Palanpur and Balaram was 30 ft. in breadth and also it has got 5 ft. kutcha road on each side and on the corner of Malana-Palanpur highway road, there were blood stains and the pieces of the glass were there. That shows that the collision took place in the midst of the highway and at the place where there was crossing from Malana side towards the highway. Under the circumstances, it cannot be said that the learned Tribunal was in error in attributing 40% negligence to S.T. Driver. In our considered opinion the learned Tribunal has rightly awarded the compensation, which does not call for any interference of this court in these appeals. Except the aforesaid two contentions, no other contention was raised

by learned counsel Mr.Raval for the appellant-Corporation in all these three appeals and, therefore, all these three appeals are required to be dismissed.

#. This brings us to the First Appeal No.1605/83 filed by the appellant-insurance company. Shri Kapadia for Mr.S.B.Vakil for the appellant-insurance company vehemently submitted that the learned Tribunal erred in not holding that the limit of the liability of the insurance company was only Rs.10,000/=. He submitted that the learned Tribunal has wrongly relied upon the judgment of this court reported in the case of Bomanji Rustomji Ginwala Vs. Ibrahim Vali Master reported in 22 GLR 1169. According to his submission, the matter is squarely covered in his favour by the judgment of the Hon'ble Supreme Court in the case of M/s.Sheikhpura Transport Co. Ltd. Vs. Northern India Transporters Insurance Co. Ltd. reported in AIR 1971 SC 1624.

#. In the instant case, the policy is blank, as per I.M.T. 13(a) clause, it concern legal liability of the passenger. It has come on the record that insurance company has awarded the premium for covering risk of passengers and in regard to that it has not mentioned in the policy that it was limited to the extent of requirement of Motor Vehicles Act, 1939. If that is so then in our considered opinion the liability of the company would be unlimited. Similar view was taken by the learned Single Judge of this court in Bomanji's case (supra). Under the circumstances, it cannot be said that the learned Tribunal has committed any error in passing of the award, which calls interference of this court.

##. We have refrained ourselves from dealing with the aforesaid Hon'ble Supreme Court judgment cited by learned counsel Shri Kapadia because in our considered opinion the judgment of the Hon'ble Supreme Court will have no application to the facts of the present case case and the same is squarely covered by the judgment of this court in Bomanji's case (supra).

##. In view of the above discussion, we do not find any substance in any of the appeal. All these appeals fail and are dismissed with costs.

(B.J.Shethna, J.)

(N.G.Nandi, J.)

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